

No. 22-5281

---

---

**UNITED STATE COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

AMERICAN OVERSIGHT,

*Plaintiff-Appellant,*

v.

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, and  
OFFICE OF MANAGEMENT AND BUDGET,

*Defendants-Appellees,*

COMMITTEE ON WAYS AND MEANS OF THE U.S. HOUSE OF REPRESENTATIVES,

*Intervenor-Defendant-Appellee.*

On Appeal from the United States District Court  
for the District of Columbia, No. 17-cv-0827-EGS  
Before the Honorable Emmet G. Sullivan

**STATEMENT OF ISSUES TO BE RAISED ON APPEAL**

KATHERINE M. ANTHONY  
MEHREEN A. RASHEED  
AMERICAN OVERSIGHT  
1030 15th St. NW, B255  
Washington, DC 20005  
(202) 869-5246

*Counsel for Appellant*

November 28, 2022

Plaintiff-appellant American Oversight hereby submits this statement of issues to be raised in this appeal:

- (1) Whether the U.S. Department of Health and Human Services and Office of Management and Budget improperly withheld communications between agency personnel and members of Congress and Congressional staff under the “consultant corollary” to Exemption 5 of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(5).
- (2) Whether the U.S. Department of Health and Human Services and Office of Management and Budget improperly invoked the deliberative process privilege under FOIA Exemption 5 to withhold communications between agency personnel and members of Congress and Congressional staff.
- (3) Whether the U.S. Department of Health and Human Services failed to conduct an adequate search for records responsive to Plaintiff-appellant American Oversight’s FOIA request.

November 28, 2022

Respectfully submitted,

/s/ Katherine M. Anthony

Katherine M. Anthony

D.C. Bar No. 1630524

AMERICAN OVERSIGHT

1030 15th Street NW, B255

Washington, DC 20005

(202) 897-3918

katherine.anthony@americanoversight.org

*Counsel for Plaintiff-Appellant*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 28th day of November 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Katherine M. Anthony

Katherine M. Anthony